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INJUNCTIONS FOR PUBLIC PURPOSES.—A matter of great popular interest at the present time, the extent of the power of the courts to issue injunctions, at the suit of the government, in restraint of public nuisances, is well discussed by the Texas court in the recent case of *State v. Patterson*, 37 S. W. Rep. 478. In this case the State brought a bill for an injunction against the keeper of a common gambling-house. The court refused to grant the injunction, on the ground that the case was a purely criminal one, in which it did not appear that any irreparable injury to property or civil rights was threatened. In this conclusion the court was doubtless right. The opinion of Mr. Justice Neill is of great value, however, as showing the true extent of the power to issue injunctions in such cases. It is there strongly asserted, in contradiction to a notion now generally current, that the mere fact that acts enjoined would constitute, if committed, a criminal offence, is no reason why courts of equity should not interfere to prevent their occurrence. And it is also distinctly recognized throughout the opinion that the irreparable injury which the court will interfere to prevent need not be an injury to tangible property, but may be an injury to the civil rights of a private person or of the public. In taking this broad view of the proper use of injunctions the Supreme Court of Texas approves the unanimous opinion of the Supreme Court of the United States in the important case of *In re Debs*, 158 U. S. 564. That these cases are now established law is shown by the very fact that a bill has been proposed in Congress to cut down by statute the power of the Federal courts to enforce such injunctions.

RECOVERY OF RENT UNDER AN ULTRA VIRES LEASE.—The New York Court of Appeals has further indicated its position on the troublesome doctrine of *ultra vires* in *Bath Gaslight Co. v. Claffy*, 45 N. E. Rep. 390. Plaintiff, a gas company, executed an *ultra vires* lease of its entire plant and franchises. The lessee after occupying for some time

made default in the payment of rent, and finally the lessor resumed possession. This was an action against a surety, on a bond conditioned for the performance of the lessee's covenants, to recover the amount of the rent that accrued while the lessee was in actual possession. The court, Vann, J. dissenting, affirms the judgment for the plaintiff, going squarely on the theory that the lessee was liable to this extent on the lease. In delivering the opinion of the majority, Andrews, C. J., says, "We think the demands of public policy are fully satisfied by holding that, as to the public, the lease was void, but that, as between the parties, so long as occupation under the lease continued, the lessee was bound to pay the rent, and that its recovery may be enforced by action on the covenant." This is not affected by the *quasi* public nature of the corporation. Whether a lessee can escape further liability on the lease by abandoning possession is left an open question.

This decision throws additional light on the court's view of the requirements of public policy. Direct proceedings by the State afford sufficient remedy for violations of the charter, while honesty and fair dealing demand that payment should be made for benefits received. To reach this result by implying a contract, after holding the actual contract void, is mere evasion. This result is in line with the position taken by Mr. Morawetz. As the elements of contract are present and there is no illegality in the proper sense, to allow recovery on the contract where either party has performed best satisfies the requirements of public policy. Until there is performance the contract is voidable. 2 Morawetz, Corp., §§ 650, 685, 689.

But where shall the line be drawn? If the contract is good in part, will the court give damages for breach of the unexecuted part? If so, what performance will be required to bring about this result? It has often been said that performance cannot give validity to that which is void in its inception. Mr. G. W. Pepper, in an article in 9 HARVARD LAW REVIEW, 255, 269, points out theoretical difficulties that confront a court, which, taking this view of public policy, is yet unwilling to hold all corporate contracts binding upon the parties.

CONDITIONS IN RESTRAINT OF MARRIAGE.—A condition annexed to a testamentary gift, to the effect that, if the donee marries, the property shall vest in another, is void as against public policy, and the gift is treated by the courts as absolute. Stated in its baldest form, the rule is this, that conditions in general restraint of marriage are illegal. Simple and intelligible as this appears at first sight, the subtleties it has given rise to are endless. For example, one who explores the mysteries of the doctrine meets at the outset a well established exception. If the gift is to a widow or widower the condition is valid, that is, the rule does not apply to second marriages. An illustration of this is to be found in the late Tennessee case of *Herd v. Catron*, 37 S. W. Rep. 551, where a testator devised land to his widowed daughter with a proviso that, if she married again, the land should go to her son. She did marry, and the court held that the gift over took effect. The reason for the general rule is of course to be found in the injury which the promotion of celibacy inflicts upon the state. The prevention of second marriages is naturally not deemed such an injury, and this exception to the rule is universally recognized.

Difficult questions often arise in determining what is a "general" re-